

11/20/2002

1765007 - R8 SDMS

NOV 27 2002

ERIC JAMES HEIL, ESQ.

11-20-02

Sheldon Muller
US EPA Region 8
999 18th Street, Suite 500
Denver, CO 80202-2466

RE: St. Louis Tunnel Discharge

Dear Sheldon,

The Board of Trustees met on November 20, 2002, and approved this letter. The Town of Rico passed *Resolution No. 2001-4 Concerning Water Pollution by Inactive and Abandoned Mines in the Rico Area* last October which stated in part,

"The Board of Trustees hereby supports continued action by federal and state agencies to enforce compliance with the Clean Water Act and the Colorado Water Quality Control Act, to seek penalties and fines for past willful violations of the discharge permit requirements, and to use CERCLA and Superfund authority as necessary to expedite re-institution of adequate treatment of the St. Louis Tunnel Adit."

The Town has since successfully applied for a Brownfields Assessment grant project which involves in part the assessment of properties in the St. Louis Tunnel area for the purposes of potential redevelopment of a light industrial park. A light industrial park use is a recommended use in the Rico Regional Master Plan. The Town believes there is a current need for such use and development as a Town project is a feasible and appropriate route. ARCO has been very cooperative and helpful in providing technical assistance regarding planning for potential light industrial uses. This project is being processed through the EPA and Mark Walker with CDOHE. It is very important to clarify that the Town understands that this brownfields project is independent of the pending Department of Justice action for Clean Water Act violations against Rico Development Corporation and the estates of Wayne Webster and David Sell.

At this time the Town recognizes that neither the federal nor state governments are pursuing the enforcement of federal and state water quality regulations against any living parties or existing corporations. The Town has previously adopted the policy in *Resolution No. 2001-4* supporting the use of CERCLA and Superfund authority as necessary to expedite re-institution of adequate treatment of the St. Louis Tunnel adit. As part of that resolution the Town also supported the *Schedule Outline Development of Proposal for St. Louis Adit Discharge Remedy* proposed by ARCO. This Schedule Outline proposed a date of April 1st to present a draft plan for treatment of the St. Louis Tunnel adit. As of the date of this letter no draft plan has been presented yet. The Town understands that many complicated issues exist which require a certain amount of time to study the issues and formulate workable solutions; however, the fact remains that the St. Louis Tunnel treatment system was abandoned six years ago in the fall of 1996.

In addition, it has been my understanding from previous conversations that the federal government was intending to pursue settlement with potentially responsible parties, including ARCO and NL Industries, under the authority of CERCLA. The Town hereby requests that CERCLA enforcement be formally and officially initiated. Town believes it is important that any potential settlement for the water quality violations comes under the clear authority of federal environmental regulations to minimize the potential for re-occurring non-compliance or abandonment of the treatment system in the future.

Town is very concerned about the history of land transactions from the consolidated Rico Argentine Mining Company land holdings to the present day situation of fractured land ownership and apparent intentional use of corporate structures and real estate sales to separate environmental liability from the potentially valuable land assets. The Town also has concerns about the repeated suggestion from EPA studies and other recent research that mercury releases are associated with the past mining activity in Rico and are contaminating McPhee reservoir.

The Town requests scheduling a meeting in Rico whereby federal and state officials would have the to opportunity answer the community's questions concerning the status of enforcement actions, settlement with the Webster and Sell estates, the Superfund process, the magnitude of contamination to the Dolores River water shed, and the research on connecting mercury contamination to past mining activity in the Rico area. Town suggests considering a potential date in late January or early February. Finally, the Town understands that federal and state resources are limited; therefore, the Town will contact our state and federal legislators and request their support for federal and state attention to the on-going water quality violations in our area.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric James Heil". The signature is fluid and cursive, with a large initial "E".

Eric James Heil

Cc: Mark Walker, CDHOE
Tony Trumbly, Attorney General's office

11/20/2002

ERIC JAMES HEIL, ESQ.

TELECOPIER COVER SHEET

TO: SHELDON MULLER

DATE: 11-21-02

FAX NO: (303) 312-6953

FROM: Eric James Heil

PHONE: (970) 967-5550

RE: LETTER

PAGES W/ COVER: 2

NOTES:

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Sincerely,



Eric James Heil

Cc: Mark Walker, CDHOE
Tony Trumbly, Attorney General's office

**TOWN OF RICO
RESOLUTION NO. 2001-4**

**CONCERNING WATER POLLUTION BY INACTIVE AND
ABANDONED MINES IN THE RICO AREA**

WHEREAS, the Rico Regional Master Plan, Section III. Goals and Objectives, Environmental Protection, Objective 3. States that is an objective of the Town to, "Ensure all water in the Rico Region, both ground and surface, meet water quality standards capable of supporting aquatic life at a level comparable to other natural mountain streams; and that these waters do not pose a human or other environmental health threat in the valley"; and,

WHEREAS, the United States of America has filed a civil action in May, 2000, pursuant to the federal Clean Water Act, and the Colorado Water Quality Control Act against Rico Development Corporation, and Wayne Webster and Virginia Sell individually, for unlawful discharge of pollutants and for the failure to monitor and report the discharge of pollutants; and,

WHEREAS, such violations have occurred since and prior to 1996 and Rico Development Corporation allowed its corporate status in Colorado to elapse on November 1, 1996, which coincides with the sale of substantial assets held by Rico Development Corporation to Rico Properties, LLC, Rico Renaissance, LLC, and related and controlled other entities; and,

WHEREAS, Rico Properties received title to the St. Louis Tunnel area from Rico Development Corporation, then unilaterally executed a "Correction Deed" and attempted to transfer this property back to Rico Development Corporation, in February of 1997, which occurred after the dissolution of Rico Development Corporation on November 1, 1996, thus clouding the legal status of ownership of the St. Louis Tunnel area; and,

WHEREAS, Virginia Sell has since deceased and the Rico Town Board, upon information, has cause to believe that Wayne Webster, due to health and age, may decease in the near future, and during at least the last five years and more valuable assets in the form of real estate has been sold by Rico Development Corporation, by Wayne Webster and/or Virginia Sell individually or by relatives of Wayne Webster and/or Virginia Sell, by Rico Properties, LLC., and by Rico Renaissance, LLC., and related entities; and,

WHEREAS, the Town Board finds that Rico Properties, LLC., and Rico Renaissance, LLC., have always represented these respective entities and other entities that own land purchased from Rico Development Corporation, as related entities with common control for the purpose of planning and development approvals sought from the Town of Rico; and,

WHEREAS, the Town Board finds that the sale of properties by all mentioned subsequent owners of the former Anaconda property holdings in the Rico area has occurred and that all mentioned subsequent owners of the former Anaconda property holdings in the Rico area have sought to avoid liability for the water pollution discharges related to inactive and abandoned mines in the Rico area; and,

WHEREAS, the Town Board finds that the treatment of the St. Louis Tunnel discharge has been abandoned since 1996 and any plan, agreement or federal or state action related to the unlawful discharge of pollutants into the Dolores River and/or Silver Creek is likely to require several more years before such discharge or discharges are treated and such pollution is abated and that any such plan, agreement or federal or state action is likely to involve multiple entities, property owners, and individuals; and,

WHEREAS, Atlantic Richfield Company has expressed interest in participating in the re-establishment of treatment for the St. Louis Tunnel discharge, has taken preliminary steps to prepare an assessment plan for treatment, has taken action to repair the Blaine Tunnel bulkhead and eliminate that discharge into Silver Creek, has taken action to maintain the treatment area settling ponds to prevent potential catastrophic failure of the settling ponds, and has proposed a *Schedule Outline Development of Proposal for St. Louis Adit Discharge Remedy*;

NOW, THEREFORE, be it resolved by the Board of Trustees, the following:

1. Support of Schedule Outline

The Board of Trustees hereby supports the *Schedule Outline Development of Proposal for St. Louis Adit Discharge Remedy*, the included task items listed, and the overall concept of all related parties working together to reach an equitable and workable solution to re-institute adequate treatment of the St. Louis Adit Discharge in order to promote protecting and restoring the aquatic habitat in the Rico Region and to reduce environmental health threats in the Rico Region.

2. Support of Continued Federal and State Action

The Board of Trustees hereby supports continued action by federal and state agencies to enforce compliance with the Clean Water Act and the Colorado Water Quality Control Act, to seek penalties and fines for past willful violations of the discharge permit requirements, and to use CERCLA and Superfund authority as necessary to expedite re-institution of adequate treatment of the St. Louis Tunnel Adit.

3. Support of Considering Town Participation

The Board of Trustees hereby supports participation by the Town of Rico during the Schedule Outline period and otherwise to consider, study, analyze and discuss potential opportunities for the Town of Rico, or other community based entities as may be determined appropriate, to facilitate, participate or otherwise assist with efforts to re-institute adequate treatment of the St. Louis Tunnel Adit.

Resolution read, approved and adopted this 17th day of October, 2001.

By: Robert E. Cummings
Rob Cummings, Mayor Pro-Tem

Attest: Linda Yellowman
Linda Yellowman, Town Clerk